REMARKS

Claims 1-5, 7, 11, 12 and 14-16 are pending in this application. Claims 1 and 11 have been amended. No new matter has been introduced.

The drawings are objected to as "the stationary handle and the movable handle of claim 11 being asymmetrical with respect to a longitudinal axis of the instrument when in an open position must be shown or the feature(s) canceled from the claim(s)." (December 31, 2007 Office Action at 2). Applicants submit that Figure 8 illustrates distal tip 325 in an open position, and handle 310 and trigger 314 out of axial symmetry with respect to a longitudinal axis of the suture retriever 400. Withdrawal of the drawings objection is respectfully requested.

Claims 1-3, 5 and 7 are rejected under 35 U.S.C. §102(e) as being anticipated by Watschke et al. (U.S. Appl. Publication No. 2003/0023250) ("Watschke"). This rejection is respectfully traversed.

The claimed invention relates to an arthroscopic instrument. As such, amended independent claim 1 recites an "arthroscopic instrument" comprising *inter alia* "a shaft having a sharp distal tip for capturing and retrieving suture within a patient's body," "an articulating mechanism disposed on the shaft and in communication with the sharp distal tip," "a handle extending from the shaft" and "a single lever disposed pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other relative to a direction transverse to a longitudinal axis of the shaft." Amended independent claim 1 also recites "a rod extending along the shaft and linking the articulating mechanism to the lever, wherein the lever includes a cam mechanism that engages and cooperates with the rod to move the rod longitudinally within the shaft to operate the articulating mechanism."

Watschke does not anticipate the subject matter of claims 1-3, 5 and 7. Watschke teaches a "surgical instrument" which is "capable of probing tissue, and preferably provides tactile feedback concerning the condition of the tissue" (abstract), and not an instrument with "a shaft having a sharp distal tip for capturing and retrieving suture within a patient's body," or with "an

articulating mechanism disposed on the shaft and in communication with the sharp distal tip," as amended independent claim 1 recites. Distal portion 140 of Watschke is not a "a sharp distal tip for capturing and retrieving suture within a patient's body," as in the claimed invention.

Watschke also does not disclose or suggest "a single lever disposed pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other relative to a direction transverse to a longitudinal axis of the shaft," as claim 1 recites. Figure 20 of Watschke illustrates two levers 22 of instrument 10 capable of being "squeezed together" (¶[0088]). However, neither of the two levers 22 of Watschke is provided "pivotably on the handle and manipulable by a user to toggle between two opposed positions," much less "pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other relative to a direction transverse to a longitudinal axis of the shaft," as in the claimed invention. For at least these reasons, Watschke fails to anticipate the subject matter of claims 1-3, 5 and 7, and withdrawal of the rejection of these claims is solicited.

Claims 11 and 12 are rejected under 35 U.S.C. §102(e) as being anticipated by Witt et al. (U.S. Appl. Publication No. 2002/0165577) ("Witt"). This rejection is respectfully traversed.

Amended independent claim 11 reads on the embodiment of Fig. 8 and recites an "arthroscopic instrument" comprising *inter alia* "a shaft having a sharp distal tip for capturing and retrieving suture within a patient's body," "a multi-member, pliers-like grip, the grip including: a stationary handle extending from the shaft" and "a movable lever disposed pivotably and manipulable by a user between two positions . . . wherein the stationary handle and the movable lever are substantially symmetric relative to a longitudinal axis of the instrument when the stationary handle and the movable lever are in a closed position, and wherein the stationary handle and the movable lever are asymmetrical with respect to the longitudinal axis of the instrument when the stationary handle and the movable lever are in an open position."

Witt fails to anticipate the subject matter of claims 11 and 12. Witt teaches a finger ring-actuated structure for an ultrasonic clamping device (which is finger-operated in a scissor-like mode), and not a structure with a "pliers-like grip," as in the claimed invention. None of the embodiments of Witt illustrate a handle with "a multi-member, pliers-like grip." Witt also fails to disclose or suggest "a stationary handle extending from the shaft" and "a movable lever disposed pivotably and manipulable by a user between two positions," as claim 11 recites. Both thumb/finger ring portions 16, 18 of Witt are moveable, and none of them is "a stationary handle," as in the claimed invention.

Witt also fails to disclose or suggest an "arthroscopic instrument" with "a shaft having a sharp distal tip for capturing and retrieving suture within a patient's body," as claim 11 recites. The instrument of Witt is an ultrasonic instrument having a coagulating clamp arm 12 (articulated to an ultrasonic blade 21), and not a suture retrieving instrument with a "sharp distal tip" to allow suture passing through body tissue, as in the claimed invention. For at least these reasons, Witt fails to anticipate the subject matter of claims 11 and 12, and withdrawal of the rejection of these claims is also respectfully requested.

Claim 4 is rejected 35 U.S.C. §103(a) as being unpatentable over Watschke. Claims 14-16 are rejected 35 U.S.C. §103(a) as being unpatentable over Witt in view of Watschke. These rejections are respectfully traversed.

As noted above, Watschke does not disclose or suggest all limitations of amended independent claim 1. Watschke is also silent about a lever "disposed on an upper side of the handle and . . . adapted to be manipulated by a single digit," as dependent claim 4 recites. Accordingly, and for at least these reasons, withdrawal of the rejection of claim 4 is also respectfully requested.

Claims 14-16 depend on amended independent claim 11. As noted above, Witt fails to disclose or suggest all limitations of claim 11. Watschke does not supplement the deficiencies of Witt. Watschke teaches a "surgical instrument" which is "capable of probing tissue, and preferably provides tactile feedback concerning the condition of the tissue" (abstract), and not an instrument

with "a sharp distal end" or with "a stationary handle," much less with "a stationary handle" and "a movable lever disposed pivotably and manipulable by a user between two positions" and "substantially symmetric relative to a longitudinal axis of the instrument when the stationary handle and the movable lever are in a closed position, and . . . asymmetrical with respect to the longitudinal axis of the instrument when the stationary handle and the movable lever are in an open position," as claim 11 recites. Figure 20 of Watschke illustrates levers 22 of instrument 10 capable of being "squeezed together" (¶[0088]). Thus, Watschke does not disclose a "stationary handle" or a stationary handle and a movable lever disposed in the configurations recited in claim 11.

Applicants also submit that a person of ordinary skill in the art would not have been motivated to combine the teachings of Witt with those of Watschke, to arrive at the claimed invention. The crux of Witt is an ultrasonic clamping device which has a fixed or removable blade tip and clamp assembly for ultrasonic treatments (to provide a variety of essentially exchangeable tips, while reducing operationally engendered vibrations and stresses at the point of the coupling to the clamp arm). In contrast, the crux of Watschke is a surgical suture passer having first and second jaws that are "sized and shaped to probe tissue without substantially damaging or traumatizing the probed tissue." (Abstract). Watschke also teaches "a jaw manipulator capable of moving the jaws" and "a suture manipulation member for movement relative to the body portion between first and second positions in order to pass the suture and dart assembly from the first jaw to the second jaw" (¶[0013]). Accordingly, a person of ordinary skill in the art would not have been motivated to combine the ultrasonic clamping device of Witt with the suture manipulator and dart assembly of Watschke.

A person of ordinary skill in the art would also not have been motivated to combine the design of Witt that has a removable blade tip and clamp assembly for ultrasonic treatments (to provide a variety of essentially exchangeable tips) with the design of Watschke that has a non-removable distal portion 140. For at least these reasons, the subject matter of claims 14-16 would not have been obvious over Witt and Watschke, whether considered alone or in combination. Withdrawal of the rejection of these claims is also respectfully requested.

Allowance of all pending claims is solicited.

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